

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

CWP No.14125 of 1995  
Date of Decision: 26.04.2013

Rameshwar Dass Singla

...Petitioner

Versus

State of Punjab and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Mr. Puneet Gupta, Advocate  
for the petitioner.

Mr. K.K. Gupta, Addl. Advocate General, Punjab  
for the respondents-State.

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**Amol Rattan Singh, J.**

1. In this petition, the petitioner has sought the benefits of the service rendered by him with the Government of Himachal Pradesh, as a College Lecturer, towards protection of substantive pay, pay fixation and other benefits, including pensionary benefits, for his subsequent service with the Punjab Government.

2. At the very outset, Sh. Puneet Gupta, learned counsel for the petitioner, stated that he only presses the case for grant of benefit of the said service in Himachal Pradesh, for pensionary benefits.

3. The admitted facts of the case are that, the petitioner was appointed as a Lecturer of Economics in the Education Department of

Himachal Pradesh on 29.09.1967, in the pay scale of ₹300-600/- . He was confirmed as such w.e.f. 10.03.1972.

4. In response to an advertisement issued by the Punjab Public Service Commission, for recruitment to the post of Statistical Officer (PAS Class-I), in the Agriculture Department of the Punjab Government, the petitioner applied through proper channel and his application was forwarded by the Director of the Education Department, Himachal Pradesh to the Secretary, Punjab Public Service Commission, Patiala, vide letter dated 31.08.1973, (annexed as Annexure P-1 with the petition).

5. Having been duly selected by the Commission, he was appointed as Statistical Officer, in the pay scale of ₹400-1250/- . Consequent thereupon, the Director of Education, Himachal Pradesh, ordered his relieving on 27.05.1974, with the condition that he would resign his post on the expiry of two years from the date of his relieving, in case he does not join back in the department; that's to say, his lien was retained for a period of two years, in the Department of Education, in Himachal Pradesh.

He was actually relieved by the Principal, Government College, Nahan (Himachal Pradesh), on the afternoon of 30.05.1974, on which date he was drawing a substantive pay of ₹450/- . He joined thereafter, in Punjab.

Thereafter, he resigned from Himachal Pradesh, and his resignation was accepted w.e.f. 31.05.1976, vide order dated 25.10.1976, which is also annexed as Annexure P-3 with the petition.

6. It is stated by the petitioner, and not denied by the respondents, that upon entering into service in Punjab, he represented to

the respondents that his pay at the rate of ₹450/- be protected, as he was a confirmed employee of the Himachal Pradesh Government and that the same benefit had been granted to one Sh. Sukhdev Singh, who was earlier working with the Himachal Pradesh Government and was subsequently employed by the respondent department, i.e. Directorate of Agriculture, Punjab.

7. Vide letter dated 13.9.1988, the petitioner was informed that his case for counting "temporary service" rendered in the Government of Himachal Pradesh, would be considered as soon as he is confirmed in his present post, i.e. the post of Statistical Officer. Though, in the reply, it is stated that his representation was rejected in the year 1987, but it is, at the same time, admitted that it was subsequently decided on 19.04.1988, that his case for counting of previous service would be considered upon his confirmation.

8. Thereafter, the petitioner was confirmed in the Punjab Agriculture Service, Class-I, on 02.11.1992, upon which he again represented for benefit of previous service. The representation having been rejected in March, 1994, he yet again represented on 04.10.1994 that his case be considered sympathetically, upon which he was again informed on 19.05.1995 that his case had already been rejected earlier. These factual aspects are not denied in the reply filed by the respondents.

9. The stand taken in the reply filed, is that, since the petitioner had not requested the Punjab Public Service Commission for protection of his pay for pensionary purposes, at the time when he applied for the post of Statistical Officer, Punjab, his case has been

rejected. As opposed to this, the case of Sh. Sukhdev Singh, cited by the petitioner, was accepted, in view of the fact that he had made such a representation, along with his application, to the Punjab Public Service Commission, which had accepted the same. Consequently, the Government had implemented the decision of the Punjab Public Service Commission.

10. Sh. Puneet Gupta, learned counsel for the petitioner, has drawn my attention to copy of a Memo dated 20.03.1986 (Annexure P-11), issued by the Department of Finance and addressed to all the Heads of Departments in the State of Punjab, duly received by the Director, Agriculture, Punjab, i.e. respondent No.2. The said memo/circular states, in effect, that, after consultations between the Governments of Punjab and Himachal Pradesh, it has been decided, on reciprocal basis, that the proportionate pensionary liability in respect of those temporary employees, who had rendered "temporary service" under either the Punjab or the Himachal Pradesh Governments, prior to obtaining posts under the other State Government, would be shared by such previous government to the extent that such service qualified for pensionary benefits.

The said circular is reproduced here, in extenso:

"Copy of Memo. No.16/98/80-IFP-III/4525, dated: 20.03.1986 from Deputy Secretary Finance(s), Government of Punjab, Department of Finance (Finance Personnel III Branch) addressed to all the Heads of Departments and others.

Subject: Allocation of Pensionary liability in respect of temporary service rendered under the Government of Punjab and the Government of Himachal Pradesh.

Sir,

I am directed to refer to the subject noted above and to say that the Government of Punjab has been considering in consultation with the Government of Himachal Pradesh the question of sharing, on a reciprocal basis, the proportionate pensionary liabilities in respect of those temporary employees who had rendered temporary service under either of the State Governments of Punjab and Himachal Pradesh prior to obtaining posts under the other State Government on their own volition in response to advertisements or circulars, including those by the State Public Service Commissions and who are eventually confirmed in their new posts. It has since been decided by the Government of Punjab, with the concurrence of the Government of Himachal Pradesh, that:-

- i) in cases in which an employee has rendered temporary service under the Government of Himachal Pradesh before joining service with the Government of Punjab, the liability of pensionary benefits for the service will be shared by the Government of Himachal Pradesh to the extent that service would have qualified for the grant of pension under the pension rules applicable to the employees of the Government of Himachal Pradesh;
- ii) the liability of pensionary benefits for the temporary services rendered under the Government of Punjab before joining service with the Government of Himachal Pradesh will be shared by the Government of Punjab to the extent that service would have qualified for pension under the rules of the Government of Punjab;
- iii) the amount of pension shall be determined by the Government from the service of which the employee finally retires in accordance with the pension formula applicable in that Government at the time of retirement of the employee; and
- iv) the gratuity, if any, received by the employees for temporary service under either State Government will have to be refunded by them to the State Government from which it was received for the service under that Government.

2. This benefit will be admissible only to the following categories of employees namely:-

- i) those who having been retrenched from the service of the either of the State Governments obtained on their own employment under these State Governments either with or without interruption between the date of retrenchment and the date of retrenchment and the date of new appointment; and

ii) those who while holding temporary posts under either of the State Governments apply for posts under the other State Government through proper channel/with permission of the Administrative authority concerned.

3. The benefit may be allowed in such cases also in which an employee is required, for administrative reasons/ for satisfying technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, and a certificate, to the effect that such resignation had been tendered for administrative reasons/to satisfy a technical requirement to join the new posts with the permission of the Administrative authority concerned may be issued by the authority accepting the resignation. Necessary record may also be made in the service book under proper attestation to enable the employee concerned to get this benefit at the time of retirement.

4. These orders shall come into force with effect from the 31<sup>st</sup> March, 1982 and cases of all employees retiring on that date or thereafter will be regulated accordingly.

No.16/9889-IFPIII/4526, dated: Chandigarh the, 20.03.1986

A copy, each, with spare copy signed in ink, is forwarded to:-

- i) The Accountant General (Accounts and Entitlement) Punjab, Chandigarh.
  - ii) The Accountant General (Audit), Punjab, Chandigarh.
- for information and necessary action.

Endst. No.5367-5427-10-61-XVIII/E1(4), dt. Chandigarh, the 15.4.86

A copy is forwarded to:-

- 1) All the State Level Officers.
  - 2) All the Chief Agricultural Officers.
  - 3) EI(1), EI(2), and EI(7) Assistants of Establishment Branch-I
  - 4) Supdt. Estt. Branch II (with Four spare copies)
  - 5) All Officers/Branch Incharges (except Supdt. Establishment Branch I & II) in the Department of Agriculture, Pb. Chandigarh,
- for information and necessary action.

Sd/- D.D.A (HQ)

for Director of Agriculture, Punjab.”

11. The reply given by the respondents to the relevant para (Para No.8), where the said circular has been referred to and relied upon by the petitioner, is the same; that is, that at the time of his selection, the petitioner had neither requested the Punjab Public Service Commission for protection of his pay on his selection as Statistical Officer, nor had the Punjab Public Service Commission recommended the same.

12. On a query put to Sh. K.K. Gupta, learned Addl. Advocate General, Punjab, he has relied upon the same submissions as made in the written statement; and has further argued that, it was for the petitioner to apply to the Himachal Pradesh Government to grant him such pensionary benefits.

13. I absolutely fail to understand, as to how the stand taken in the written statement, and by the learned counsel for the respondents, is tenable in any manner, in the face of the clear cut circular/instructions issued by the Finance Department, vide Memo dated 20.03.1986, reproduced hereinabove. As to why the petitioner (now a pensioner), should be made to run to the Government of Himachal Prades to claim his pensionary benefits, when the present respondents (State of Punjab in the Department of Agriculture), are bound by the said circular/instructions, is not understandable. The circular makes it incumbent upon the Punjab Government, to claim proportionate share of the petitioner pension from the Himachal Pradesh Government. It needs mention that nowhere in the reply is it stated that the petitioner's earlier service in Himachal Pradesh, does not qualify for pension.

14. No doubt, no plea has been raised by the respondents, but it is, nevertheless, necessary to deal with the same that, the said

circular/instructions, refer to only service rendered by temporary employees in either State, for the purpose of such service is to be counted in the either State, towards pensionary benefits.

However, this cannot be a bar for an employee better placed than a temporary employee, who was confirmed in the first State and, thereafter, joined service of the second State. Thus, if benefit of temporary service in another State can be given to an employee in the second State, there is no rational basis, whatsoever, for denying such benefit to an employee who was confirmed in the first State and, subsequently was employed in the other State.

15. Further, though the Government of Himachal Pradesh has not been impleaded as a party in the present writ petition, however, in view of the fact that the Memo dated 20.03.1986 categorically refers to a reciprocal agreement between the two States, it would not be necessary for such impleadment, in view of the fact that the liability to be foisted on that Government, would be in terms of the reciprocal agreement so reached.

16. I, therefore, hold that the respondents would be bound by the said circular/instructions (dated 20.03.1986), which are not denied by them, and, as such, the petitioner would be entitled to the benefits of the same, as per its terms and conditions.

17. The writ petition is thus allowed, to the extent of grant of pensionary benefits to the petitioner, by counting his service rendered in Himachal Pradesh. The respondents are directed to work out all the pensionary benefits, admissible to the petitioner after counting the service rendered by him in the Government of Himachal Pradesh, prior

to his joining service in the State of Punjab on the post of Statistical Officer. Such benefits would be worked out and paid to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

18.         Needless to say, the liability to be incurred upon the Government of Himachal Pradesh would be taken up by the respondents with that State Government in terms of the reciprocal agreement reached between the two States, referred to in the Circular dated 20.03.1986.

**(AMOL RATTAN SINGH)  
JUDGE**

26.04.2013

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